

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

BITWISE COMMUNICATIONS, INC.                     )  
d/b/a OmniLEC   )  
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v.   )  
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   )  
AMERITECH ILLINOIS d/b/a                         )  
AT&T - ILLINOIS, f/k/a SBC                        )

INFORMAL COMPLAINT OF  
BITWISE COMMUNICATIONS, INC.  
AGAINST AMERITECH ILLINOIS d/b/a AT&T - ILLINOIS,  
f/k/a SBC

To: Illinois Commerce Commission  
Consumer Affairs Division  
527 E. Capitol Avenue  
Springfield, IL 62794

NOW COMES, Petitioner, BITWISE COMMUNICATIONS, INC. d/b/a OmniLEC  
("BitWise" or "Petitioner"), through its attorneys, pursuant to 83 Ill. Adm. Code Section  
735.200(a)(2). As required by Section 735.200(B)(i)-(iv), Petitioner provides the following  
information:

Name, Address and Telephone Number of Petitioner, Customer of AT&T:

BitWise Communications, Inc. d/b/a OmniLEC  
331 Fulton  
Suite 330  
Peoria, IL 61602  
(309) 670-0575

Name of the Company Involved:

Ameritech Illinois d/b/a AT&T - Illinois, f/k/a SBC

Nature of the Complaint:

This informal complaint alleges a violation by AT&T of 83 Ill. Adm. Code 735; specifically, AT&T is threatening to inappropriately terminate service to BitWise with respect to the following account numbers on or before January 27, 2009:

217 S67-2120 374

217 G68-1001 258

217 G67-9414 374

217 G67-7723 370

217 G67-0819 819

217 S60-3848 376

217 S60-4625 625

217 S60-1710 710

217 S60-4619 619

The above-referenced accounts consist of several thousand individual telephone lines and include service to a number of medical facilities, including a hospital and several doctors' offices; accordingly, the threatened termination of service by AT&T will not merely constitute a violation of Commission rules, such action will affirmatively jeopardize public safety.

Bitwise has ordered service for the above-reference Accounts through the procedures set forth by AT&T in the Interconnection Agreement approved by Final Order of the Illinois Commerce Commission on December 19, 2001 in Case No. 01-0649, as subsequently amended by the parties and further approved by the Commission (the "BitWise ICA"). Furthermore, Bitwise has made payments on the accounts in accordance with the rates and charges set forth in BitWise ICA. AT&T, however, has refused to correctly credit BitWise's payment for services

and persists in demanding payment from BitWise in excess of the amounts which may legally be imposed upon BitWise for service on the above-reference Accounts. AT&T has also unilaterally diverted monies owed by AT&T to BitWise pursuant to the BitWise ICA, applying such amounts without authorization to amounts which AT&T alleges are owed by BitWise but which cannot be reconciled with amounts AT&T is authorized to bill BitWise pursuant to the BitWise ICA.

BitWise has complied with the dictates of Section 735.190(d) here.<sup>1</sup> Specifically, BitWise has disputed each portion of AT&T's bills related to the above identified Accounts which attempt to impose rates and charges against BitWise which are in excess of the rates and charges authorized by the BitWise ICA. To the extent that any portion of an AT&T bill on the above-referenced accounts has not been disputed by Petitioner, BitWise has paid such undisputed portion. Further, BitWise stands ready, willing and able to pay all future periodic bills from AT&T on the identified accounts to the extent such bills accurately reflect rates and charges to which BitWise is entitled pursuant to the BitWise ICA. Finally, BitWise has already attempted to resolve the disputed matters through private discussions with AT&T throughout the pendency of these disputes; notwithstanding the failure of these efforts to date, BitWise commits to enter into discussions with AT&T to settle the disputes with dispatch.

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<sup>1</sup> Section 735.190(d) provides that:

"1) When a customer disputes a particular bill, the company shall not discontinue service for nonpayment so long as the customer:

- A) Pays the undisputed portion of the bill; and
- B) Pays all future periodic bills by the due date; and
- C) Enters into discussions with the company to settle the dispute with dispatch."

Specific Relief Requested:

Consistent with 83 Ill. Adm. Code Section 735.200(d), BitWise requests that AT&T be precluded from discontinuing service to Account Nos. 217 S67-2120 374, 217 G68-1001 258, 217 G67-9414 374, 217 G67-7723 370, 217 G67-0819 819, 217 S60-3848 376, 217 S60-4625 625, 217 S60-1710 710, 217 S60-4619 619 during the pendency of this Informal Complaint proceeding and any Formal Complaint proceeding based upon the matters raised herein, to the extent such a formal proceeding becomes necessary to resolve these matters.<sup>2</sup>

Furthermore, in accordance with 220 ILCS 5/5-201, 5/9-250 and 5/5-202, Petition requests as follows:

That AT&T be required to re-rate the disputed portions of bills issued to BitWise on the above referenced Accounts No. in a manner consistent with the rates and charges which AT&T is compelled to charge BitWise pursuant to the BitWise ICA;

That the Commission determine the amount of the appropriate refund and/or reparation owed by AT&T to BitWise for violation of ICC rules, including, but not limited to, the issuance of premature and/or inappropriate notices of termination by AT&T, the conversion of monies owed by AT&T to BitWise pursuant to the BitWise ICA, and the billing by AT&T of rates and charges to BitWise in excess of those authorized by the BitWise ICA;

That the Commission direct that AT&T refund in full to BitWise any and all funds paid by BitWise to AT&T while AT&T was not in compliance with the Illinois Administrative Code and Illinois Compiled Statutes, including any and all funds seized by AT&T and applied in any

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<sup>2</sup> 735.200(d): "Service shall not be discontinued for the reason which is the subject of the complaint during the pendency of any proceeding (formal/informal) before the Commission pursuant to the provisions of this Section so long as the customer has complied with the provisions of Section 735.190(d)."

manner to a BitWise account rather than remitted directly by AT&T to BitWise as required by the BitWise ICA;

That the Commission grant any other relief the Commission deems just and equitable in this matter.

  
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Michael Shuler, President  
BITWISE COMMUNICATIONS, INC. d/b/a  
OmniLEC

Dated: 1/12/2009

**Via Electronic Mail on January 20, 2009**

Mr. Michael Shuler  
BitWise Communications, Inc.  
331 Fulton, Suite 330  
Peoria, IL 61602

Re: ICC Informal Complaint No. 2009-00762;  
(BitWise Communications)

Dear Mr. Shuler:

I am writing to respond to the five-page "Informal Complaint" that you submitted to the Illinois Commerce Commission ("Commission") last week on behalf of BitWise Communications, Inc. ("BitWise"). The Commission's Consumer Services Division provided a copy of the submission to Illinois Bell Telephone Company ("AT&T Illinois") on January 15, 2009.

As an initial matter, I wanted to correct two misstatements in your submission. First, contrary to your assertion, AT&T Illinois is not planning to disconnect service on January 27, 2009, to the first five accounts listed in your submission, all of which are Local accounts.<sup>1</sup> Only the four Access accounts – which collectively have an unpaid balance of more than \$300,000 – are the subject of the disconnection notice that BitWise received.<sup>2</sup> Second, contrary to your assertion, the Interconnection Agreement ("ICA") between BitWise and AT&T Illinois only governs the billing rates for the five Local accounts, not the four Access accounts noticed for disconnection on January 27, the rates for which are established by AT&T Illinois Tariff No. 21. AT&T Illinois personnel have advised you of this information previously, but you continue to ignore it.

Turning to the substance of your "Informal Complaint," I point out that it contains minimal information about the basis for BitWise's disputes or the dollar amounts involved. As a result, Ellie Frausto, Doug Myser, and I spoke to you on the afternoon of Friday, January 16, to ask whether you could provide additional details relating to the disputes on the nine BANs listed in the "Informal Complaint," beyond what you had provided in September 2008 to AT&T Illinois and the Commission Staff. You advised us that the disputes in the "Informal Complaint" were the same as those that BitWise raised last year.

I will summarize that earlier set of contacts. After BitWise and AT&T had already had extensive communications about various disputes that BitWise had with its Access, Local, and Collocation accounts, on September 15, 2008, you contacted Jim Zolnierrek and Bud Green of the Commission's Telecommunications Staff. Dr. Zolnierrek

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<sup>1</sup> The Billing Account Numbers ("BANs") for these Local accounts are 217-S67-2120-374, 217-G68-1001-258, 217-G67-9414-374, 217-G67-7723-370, and 217-G67-0819-819.

<sup>2</sup> The BANs for the Access accounts are 217-S60-3848-376, 217-S60-4625-625, 217-S60-1710-710, and 217-S60-4619-619.

asked both companies questions about the disputes involving BitWise's Local accounts, and you responded to those questions shortly thereafter. AT&T Illinois sent Dr. Zolnierrek an 18-page response on October 7, which provided a detailed explanation of the company's position, not only on the disputes involving the Local accounts, but also the disputes involving the four Access accounts and one LSB account. Since you advised me on Friday that the disputes raised by the "Informal Complaint" are the same as those that AT&T Illinois addressed last fall, and you provided no new information about those disputes, AT&T's position on the disputes is unchanged. That is, AT&T finds BitWise's disputes to be without merit and does not view them as a sufficient basis to halt any planned collection activity, such as disconnection of certain accounts.

I also would like to respond to three other statements in the "Informal Complaint."

First, your submission suggests that AT&T Illinois' planned disconnection will "affirmatively jeopardize public safety" because it could lead to the termination of service to several medical facilities and thousand of individual phone lines. To the extent that the service to the medical facilities and individual lines is provided via the five Local BANs – which AT&T Illinois does not plan to disconnect on January 27 – your invocation of public safety concerns is a misdirected scare tactic. In any event, if BitWise were truly concerned about preventing loss of service to these medical facilities or individual lines, it could have done one of two things: 1) escrow the money in dispute while the dispute was pending, as provided in Section 8.4 of the General Terms and Conditions of the ICA; or 2) use the several-week period since it was advised of the January 27 disconnection date to advise its end-users that a service cut-off was possible and to allow the end-users to decide whether to make other arrangements. BitWise's provision of retail telecommunications service to medical facilities does not immunize it from having to pay for the wholesale telecommunications service that it receives from AT&T Illinois.

Second, your submission states that AT&T "unilaterally diverted monies owed by AT&T to BitWise pursuant to the BitWise ICA" and applied those monies, without authorization, to other BitWise accounts. Since the "Informal Complaint" provides no other information about this diversion claim (and you did not provide any on Friday), I can only assume that it refers to AT&T Illinois' transfer of \$29,590.97 in reciprocal compensation payments owed to BitWise to two BitWise accounts (217-S67-1208-208 and IL05800LSBXXXX) that had unpaid balances. AT&T personnel received multiple emails from you in August and September 2008, asking AT&T to use the reciprocal compensation money to pay balances on other accounts.<sup>3</sup> Based on these emails, it is difficult to comprehend how you can now maintain that such transfers were unauthorized.

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<sup>3</sup> For example, in a September 5, 2008, email to Dave Egan of AT&T, you stated with regard to BAN 217-S67-1208-208: "I have no disputes on our collocation account. It can be 100% paid from our reciprocal compensation payments that are being withheld." Similarly, in an August 26, 2008, email to Doug Howland and other AT&T personnel, you stated, "ATT currently owes us in excess of \$30K in local reciprocal compensation.... [A]t this time I would like to credit the following accounts that Doug Howland is collecting on with the money owed to us from ATT." The email then lists seven BANs, including 217-S67-1208-208 and IL05800LSBXXXX. And in an August 29, 2008, email, you advise Doug Howland,

Finally, your submission states that BitWise has "complied with the dictates" of Section 735.190(d) of the Commission's rules. Assuming that BitWise can take advantage of the dispute process established by Section 735.190(d) more than once,<sup>4</sup> I disagree that BitWise has complied with the section's provisions. Among other things, the rule provides that a customer disputing charges can avoid disconnection only by paying "the undisputed portion of the bill." 83 Ill. Admin. Code § 735.190(d)(1)(A). With regard to the four Access BANs noticed for disconnection on January 27, it is my understanding that BitWise claims that it has been charged an incorrect monthly rate for the services at issue and thus admits that some portion of the bill for those services is undisputed.<sup>5</sup> However, BitWise has paid AT&T Illinois nothing on any of these accounts since 2006. Because of BitWise's failure to pay the undisputed charges (however small) on these four accounts for more than two years, it cannot avail itself of the protection from disconnection provided by Section 735.190(d)(1).

In summary, AT&T Illinois' position is that the disputes raised by BitWise on the nine BANs listed in the "Informal Complaint" have no merit, and it refuses to re-rate BitWise's bills or refund money to BitWise. From AT&T Illinois' perspective, the "Informal Complaint" is closed, and the company intends to proceed with its planned collection activity.

Yours truly,

Rocky Sullivan  
Associate Director – Carrier Relations,  
AT&T

cc via

e-mail: Consumer Services Division, Illinois Commerce Commission,  
(via Shirley Anderson, AT&T Executive Appeals)  
Dan Faustmann, AT&T  
Ellie Frausto, AT&T  
Doug Myser, AT&T

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"Dave Egan was supposed to email you letting you know that he was looking into the recip comp credit transfers to bring the accounts you are collecting on current. I just wanted to make sure that was in progress...."

<sup>4</sup> BitWise effectively made use of the Section 735.190(d) dispute process last fall through its efforts to involve Dr. Zolniersek of the Commission Staff in resolution of its disputes with AT&T Illinois.

<sup>5</sup> For example, in a September 5, 2008, billing dispute submitted to the AT&T Access Dispute group for BAN 217-S60-3848-376, BitWise states: "POI for Quincy LATA is at the end of the McLeod DS3. QM3XD DS3 to DS1 MUX is past POI. Per ICA CLEC is not responsible for any charges past the POI. However, 3 channels go to Verizon so [BitWise] is responsible for 3/28ths of MUX. Rate for MUX per ICA is \$404.30." This language makes clear that BitWise is not disputing 3/28<sup>th</sup> (or \$43.32) of the monthly MUX charge set forth in the ICA.